

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1150 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMJANIBHAI PIRBHAI

Versus

STATE OF GUJARAT

Appearance:

MR GR SHAIKH for Petitioners

K.C. SHAH, AGP, for Respondent No. 1

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 24/07/96

ORAL JUDGEMENT

Whether the impugned order of the respondent authority under the Urban Land (Ceiling & Regulation) Act, 1976 (ULC Act) declaring 1751 sq. mtrs. of land as surplus land is tainted with or suffering from the vice of non-observance of the principles of natural justice is the main issue which has come to the surface in this petition under Article 226/227 of the Constitution of

India.

The petitioner had filled in form No.1 under section 6(1) of the ULC Act in respect of the holdings before the Competent Officer and Deputy Collector, Urban Land Ceiling, Ahmedabad who upon inquiry held by order dated 25.3.88 that 1751 sq mtrs of land was surplus land. Being dissatisfied by the said judgment and order of the Competent Authority, the petitioner preferred appeal before the Secretary and Urban Land Tribunal, State of Gujarat, under section 33 of the ULC Act which also came to be dismissed on 31st March, 1990. Hence this petition.

The learned counsel for the petitioner has raised the following three contentions:

- (1) That the impugned orders of the respondent authority declaring 1751 sq. mtrs. of land as surplus land is passed against dead persons and in violation of the principles of natural justice.
- (2) That all the three sons of the deceased land holder are entitled to separate unit each and therefore, the respondent authority has committed serious error in granting only one unit.
- (3) That the respondent authority has seriously erred in not excluding the constructed portion from the vacant land in view of the settled proposition of law.

The aforesaid three contentions are seriously traversed and controverted by the learned Assistant Government Pleader. It is contended on behalf of the respondent authority that the impugned judgment and orders recorded by the Competent Authority and the Appellate Authority are legal and valid.

It is an admitted fact that the present petitioner had filled in form No.1 under section 6(1) of the ULC Act on 14.9.76 as vahivatकर्ता of the joint family of Pirbhai Rajabbhai. The Competent Authority upon inquiry reached to the conclusion that the land holder who had filled in the form had 2751 sq.mtrs. of land on the appointed day and he was entitled to retain land to the extent of 1000 sq. mtrs. under section 4(1) of the ULC Act as all the properties were within the area of Ahmedabad City. In the circumstances, the Competent Authority declared 1751 sq. mtrs of land as surplus land held by the holder of

the land on the appointed day, by his order dated 25.3.88.

The petitioner questioned the order of the Competent Authority by filing appeal No.310/88 under section 33 of the ULC Act before the Urban Land Tribunal at Ahmedabad. The petitioner Ramjanibhai, son of Pirbhai Rajabbhai, had submitted the statement under section 6(1) of the ULC Act for and on behalf of Pirbhai Rajabbhai before the Competent Authority. It was contended before the Appellate Authority that Pirbhai Rajabbhai had expired during the pendency of the proceedings in 1985. No evidence was shown or produced about the date of death of Pirbhai. The contention that the impugned order of the Competent Authority was passed against deceased Pirbhai Rajabbhai and therefore it was a nullity cannot be accepted in view of the peculiar facts and circumstances emerging from the record of the present case. No doubt, it is true that it is a settled proposition of law that any order or decision against a dead person is a nullity. However, the question which calls for determination in this petition is as to whether in the facts and circumstances of the case, the order recorded by the Competent Authority could be said to be a nullity.

The petitioner is the son of deceased Pirbhai Rajabbhai. He for and on behalf of Pirbhai Rajabbhai had filed statement before the Competent Authority. He is one of the three sons of the deceased. Even assuming that the deceased died during the pendency of the proceedings in 1985, then also the order of the Competent Authority could not be said to be a nullity as the family of the deceased and the estate in question was fully represented by the petitioner. He had filled in form No.1 for and on behalf of the family of Pirbhai Rajabbhai and he was served with notice and he failed to show to the Competent Authority that there was no excess land at the relevant point of time. He had also challenged the order of the Competent Authority by filing appeal under section 33 of the ULC Act before the Urban Land Tribunal for and on behalf of the family of the deceased Pirbhai Rajabbhai. The present petition is also filed by the petitioner for and on behalf of the joint family of Pirbhai Rajabbhai. The deceased Pirbhai Rajabbhai had left three heirs and the petitioner is one of the heirs and legal representatives. Having regard to the facts and circumstances, the petitioner who had filed statement, who had opportunity before the Competent Authority and who had also filed appeal under section 33 of the ULC Act as Vahivatकर्ता of the family of Pirbhai Rajabbhai cannot be allowed to say that there was violation of principles

of natural justice. There was sufficient opportunity to represent the case before the Competent Authority and the estate was sufficiently represented by the petitioner as Vahivatकर्ता and as one of the heirs and legal representative of the deceased Pirbhai. The main anxiety for a writ Court while exercising extra ordinary equitable, prerogative writ jurisdiction under the Constitution is to see that whether there is any violation of principles of natural justice and whether justice is done or not in a given case and is not obliged to take technical and pedantic approach. In the circumstances, the first contention that the impugned order of the Competent Authority which came to be confirmed in an appeal is perverse and illegal on the ground of violation of principles of natural justice cannot be sustained.

The second contention that the Competent Authority should have given three units to three heirs of deceased Pirbhai Rajabbhai is also not acceptable. It is an admitted fact that deceased Pirbhai was the absolute owner in respect of the land in question on 17.2.76, the date of commencement of the ULC Act in the State of Gujarat. A person holding the land in excess dying before the issuance of notification under section 10(4) of the ULC Act does not make any difference in determining and computing the excess vacant land. The fact that the person holding the land in excess died after the statement under section 6(1) and before the issuance of notification under section 10(4) does not make any difference in computing the surplus land. Determination of surplus land had to be made keeping in mind the situation obtainable in respect of the lands in question on the appointed day, like that, 17.2.76 the day on which the ULC Act came into force in the State of Gujarat. The Competent Authority was, therefore, absolutely right in determining the ceiling limit with reference to deceased Pirbhai Rajabbhai. The fact that the holder of the land died before the issuance of the notification under section 10(4) leaving 3 heirs would not make any difference in computation. In the circumstances, grant of one unit instead of three units as contended, was fully justified. Close reading of the provisions of the ULC Act clearly shows that the determination of the extent of surplus land of a holder has to be made as on the date of commencement of the Act. If any person has died any time after the coming into operation of the Act, like that, 17.2.76 and if held any land in excess of ceiling limit, such person should file a statement within the prescribed period in the prescribed form. The statement in form No.1 under section 6(1) was filed by

the petitioner as Vahivatkartar for and on behalf of the family of the deceased. He had represented the family and the estate of the deceased. In the circumstances, only one unit, and not three units as contended, the petitioner was entitled to. Therefore, the second contention raised on behalf of the petitioner is meritless and is rejected.

This will lead to the appreciation of the third contention raised on behalf of the petitioner. In that it is contended that the Competent Authority should have excluded the construction portion from the computation of vacant land. It is true, according to the settled proposition of law, that the area of land on which construction is raised has to be excluded from the definition of vacant land. However, in order to succeed in such a plea, it is incumbent upon the petitioner to show that the house or other construction raised on the land was commenced or had completed on the commencement of the Act on 17.2.96 and that such construction was made or raised after obtaining requisite statutory permission for construction. The petitioner, in the present case, has not been able to show and satisfy the aforesaid two requirements for claiming exclusion on the construction portion from the consideration of vacant land. The Competent Authority had given sufficient opportunity to the petitioner. Merely saying that construction raised is old one is not sufficient. It must be shown that there was construction and it was authorised by the Competent Authority or Officer. The petitioner had appeared before the Competent Authority through an advocate. Several adjournments were sought. It is very clear from the materials on record that several adjournments were given to the petitioner to represent the case before the Competent Authority. It appears that the petitioner failed to avail of the opportunity and failing to avail the opportunity cannot be characterised as failure of observance of principles of natural justice. In view of the aforesaid peculiar facts and circumstances emerging from the record of the present case, it cannot be said that there is any perversity or illegality in passing the impugned by the Competent Authority which came to be confirmed in appeal.

Having regard to the aforesaid facts and circumstances and considering the relevant proposition of law, this Court is satisfied that the impugned order of the Competent Authority which came to be confirmed in appeal is justified and there is no fit case warranting interference exercising extra-ordinary, equitable and prerogative writ jurisdiction under Article 226/227 of

the Constitution of India.

With the result, this petition is liable to be rejected. Accordingly, it is rejected. Rule discharged. However, there shall be no order as to costs.

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